

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 2 OF 2017
IN
PARSI SUIT NO. 25 OF 2009**

Tanaz F Sopariwalla	...Petitioner
<i>Versus</i>	
Freddy Jal Sopariwalla	...Respondent

Mr Jayesh Gawde, *for the Petitioner.*
Mr Freddy J Sopariwalla, *Respondent present in person.*

CORAM: G.S. PATEL, J
DATED: 19th April 2018

PC:-

1. The Contempt Petition is thoroughly misconceived. This is not what contempt jurisdiction should be used for. In a matrimonial Suit in the Parsi Chief Matrimonial Court where the Contempt Petitioner was the Defendant and the Respondent was the Plaintiff, lengthy Consent Terms were arrived at on 1st November 2012. The Consent Terms provided for very many things and included agreement by the Plaintiff father (the Respondent to the Petition) to make various payments for and on behalf of the parties' daughter Speniishtaa who is today 17 years old, as also towards the second daughter Jeneffer. The Petition proceeds on the basis that in wilful

disregard of his obligations and undertakings in the Consent Terms the Respondent has failed to pay an aggregate amount of Rs.8,28,622/-. There is a chart of alleged overdue payments set out in paragraph 11 of the Petition.

2. There is an Affidavit in Reply to which there is no Rejoinder. In this the Respondent has set out all the amounts that he has paid and has fairly accepted that there are some amounts due but has merely sought time to make payments saying that he is in some financial difficulties. From this it is impossible to conclude that there is a wilful disregard of an order of a Court. It is not as if the Respondent has paid nothing at all. In fact he has paid quite substantial amounts and in addition he has fairly accepted that there are some defaults on his part but has sought indulgence to make those payments.

3. This is not the stuff of contempt. Indeed I find that other than making claims in the aggregate, there are no particulars furnished. In his reply, for instance, the Respondent clearly states that he is willing to pay the tuition and medical dues for the elder daughter but has asked for supporting documents and bills. Nothing has been shown to him, or even to me. For reasons I am unable to understand these supporting documents that should have been annexed to the Affidavit in Support or to the Petition itself have not been annexed, and for reasons that I am also unable to understand, there is no Affidavit in Rejoinder. Some of these expenses claimed seem to me to be on the higher side. Consent Term No.17 gives a figure of Rs.36,000/- as local travelling expenses and this is claimed. But this is claimed year on year without there being any indication

of whether this amount is actually spent or not. Similarly stationery expenses covered by clause 18 in the amount of Rs.24,000/- are claimed, as are vacation expenses of Rs.20,000/- under Consent Term no.2. Whether or not there has been such a vacation is unknown. There are expenses claimed under clause 12 for educational expenses. Clause 12 does not have any figure. But this cannot be read to the detriment of the Respondent when he quite reasonably asks for supporting documents while agreeing to bear educational expenses. An amount of Rs.1,00,000/- is claimed as educational expenses for Logic, Economics and Mathematics. For what year I do not know. An additional Rs.55,000/- is claimed for Sociology and Political Science and then there is an quite extraordinary claim of Rs.1,75,000/- for tuitions in Logic, Sociology, Political Science and Economics, none of these subjects required tuitions to begin with. Again there are claims for tuitions in French of Rs.20,065/-, Rs.13,000/-, Rs.16,000 and then, quite remarkably, for English tuitions in the amount of Rs.9,600/-.

4. When a claim is brought in this fashion, it is a claim for enforcement, not in contempt. It is impossible from these circumstances and having regard to what is stated in the Affidavit in Reply to hold that the Respondent is guilty of such deliberate and wilful disregard of an order of a Court or has acted so contumaciously that an order in exercise of this Court's contempt jurisdiction, one that, it is well settled, is to be exercised sparingly and judiciously, could validly be invoked.

5. There is no substance to the Contempt Petition. It is dismissed. Liberty to the Petitioner to adopt appropriate

proceedings for recovery of amounts legitimately due under the Consent Terms. No costs.

6. It is clarified that this order is not to be read as an order absolving the Respondent of his obligations under the Consent Terms. Those obligations remains and continue. I will at the same time accept his understanding that he will continue to make payments, and, further that he will pay the existing amounts by instalments by the end of March 2019. Liberty to him to apply.

(G. S. PATEL, J)